

**UNITED STATES OF AMERICA
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

United States of America, Complainant v. Richard Garza, Individually and d/b/a El Patio Restaurant and Lounge, Respondent; 8 U.S.C. 1324a Proceeding; Case No. 89100612.

DEFAULT JUDGMENT

On December 12, 1990, Complainant, the United States of America, filed a Complaint Regarding Unlawful Employment with the Office of the Chief Administrative Hearing Officer. The Complaint charged Richard Garza, Individually and d/b/a El Patio Restaurant & Lounge, Respondent, with twenty-three (23) violations of the verification requirements of the Immigration Reform and Control Act (8 U.S.C. 1324a(a)(1)(B)) and sought a civil money penalty of nine thousand dollars (\$9,000.00).

Service of the Complaint and Notice of Hearing was initially attempted by certified mail at Garza's residential address listed in his letter request for a hearing on the Notice of Intent to Fine. The complaint was returned unclaimed. Subsequently, the complaint was sent by certified mail to the address of the El Patio Restaurant and Lounge. It was again returned unclaimed. Personal service of the complaint was accomplished by Senior Border Patrol Agent Henry Luna, Jr. at the El Patio on January 10, 1990.

The Notice of Hearing on Complaint notified Respondent that it was required to file an Answer within thirty days after receipt of the Complaint, and that failure to file a timely Answer might result in a default judgment against Respondent.

Complainant filed a Motion for Default Judgment on February 26, 1990. On March 6, 1990, I issued an Order to Show Cause why Complainant's motion should not be granted. That Order, served upon Respondent by certified mail, postponed indefinitely the hearing scheduled for March 20, 1990. The Order was returnable April 3, 1990, and was mailed to Respondent's business address. That Order, like the complaint, was returned unclaimed by Respondent.

On April 25, 1990, a second Order to Show Cause was sent to Respondent's business address by certified mail and regular mail. It was made returnable May 21, 1990.

The second Order sent by regular mail was returned bearing a postal notation ``Moved Left No Address Unable to Forward Return to Sender''. The copy sent by certified mail was returned unclaimed.

However, on May 25, 1990, a copy of the second Order was left with an adult at the residence address provided in Respondent's request for hearing (4700 R.L. Shoemaker) who stated that Respondent Garza was not ``home'' at the time.

To date, no Answer nor any response to the Orders to Show Cause have been received by this tribunal. Likewise, Respondent has failed to notify the tribunal of any address change since filing the request for hearing.

As no answer has been filed and as no justification for failing to file an Answer has been provided, complainant's Motion for Default is granted.

Findings of Fact

I hereby find that Respondent violated the verification requirements of the Immigration Reform and Control Act, 8 U.S.C. 1324a(a)(1)(B), by

A. Failing to properly prepare, retain, or make available for inspection the Employment Eligibility Verification Form (Form I-9) for each for the following individuals hired for employment in the U.S. after November 6, 1986:

1. Abraham Cardoza-Holguin
2. Manuel Ramirez-Madrid
3. Andres Barrientos
4. Hector Morales
5. Vidal Chavez
6. Jaime Hernandez
7. Lico Hernandez
8. Salvador Herrera
9. Manuel Lachica
10. Esteban Morales Jr.
11. Carlos Prado
12. Ramon Reyes
13. Evaristo Simental

B. Failing to properly or timely complete Employment Eligibility Verification Form (Form I-9) for each of the following individuals hired for employment in the U.S. after November 6, 1986:

1. Jose Nieves Vega-Gonzalez
2. Esteban Morales-Bernal
3. Jose Grimaldo-Godinez
4. Roberto Chan
5. Filiberto Carrillo
6. Mario A. Tarin
7. Gabriel Soria Jr.
8. Juan Gabriel Soria Sr.
9. Guillermo Melendez
10. Antonio Dionicio-Falcon

Complainant seeks a \$500 penalty for each individual named in paragraph A, above, and a \$250 penalty for each individual named in paragraph B, above.

I find the level of the penalties sought here reasonable. More particularly, I have assumed that factors specified in 8 U.S.C. 1324a(e)(5) related to the size of the business, the alien status of employees involved, and prior violations weigh in Respondent's favor. However, Respondent's failure to answer or respond in any fashion to the orders to show cause creates doubt concerning its good faith and the sheer volume of violations, especially those related to failure to prepare or present I-9 Forms, are sufficient to support the level of fines sought.

ORDER

IT IS HEREBY ORDERED¹ that:

1. Respondent comply with the employment eligibility verification requirements of IRCA, 8 U.S.C. 1324a(a)(1)(B).

2. Respondent pay a civil money penalty of five hundred dollars (\$500.00) for individuals named in paragraph A above, and two hundred and fifty dollars (\$250.00) for individuals named in paragraph B above, for a total civil money penalty of nine thousand dollars (\$9,000).

¹ Review of this final order may be obtained in accordance with the provisions of 28 CFR 68.51.

IT IS FURTHER ORDERED:

That the hearing heretofore postponed indefinitely be, and hereby is, canceled.

Dated: July 27, 1990, San Francisco, California
WILLIAM L. SCHMIDT
Administrative Law Judge